

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0342

ADJUSTED GROSS INCOME TAX

For Tax Period 2003

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Issue

I. Adjusted Gross Income Tax –Utility Receipts Tax Add-Back

Authority: IC 6-8.1-5-1(b); IC § 6-2.3-2-4; IC § 6-3-2-1(b); IC § 6-3-1-3.5(b); IC § 6-2.3-2-1; First Chicago NBD v. Department of State Revenue, 708 N.E.2d 631 (Ind. Tax 1999).

The taxpayer protested the add-back of Utility Receipts Tax to his Sub-Chapter S Corporation distribution.

Statement of Facts

The taxpayer was the sole shareholder in a Sub-Chapter S corporation. The corporation paid Utility Receipts Tax for the tax period 2003. The Utility Receipts Tax was not added back to the corporation's income before the calculation of the shareholder's adjusted gross income tax on his distributive share of the corporation's income. The Indiana Department of Revenue (department) added back the amount of the corporation's Utility Receipts Tax to the taxpayer's distributive share from the corporation. The add-back resulted in an assessment of additional adjusted gross income tax, interest, and penalty against the taxpayer. The taxpayer protested the assessment and a telephone hearing was held. This Letter of Findings results.

I. Adjusted Gross Income Tax –Utility Receipts Tax Add-Back

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. IC 6-8.1-5-1(b). The taxpayer bears the burden of proving that the assessment is incorrect. Id.

An income tax is imposed on the adjusted gross income of the Indiana source income of corporations. IC § 6-3-2-1(a). A taxpayer's "adjusted gross income" subject to the Indiana adjusted gross income tax is defined at IC § 6-3-1-3.5(b) as follows:

In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code), adjusted as follows:

- (3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

The Indiana Utility Receipts Tax is imposed at IC § 6-2.3-2-1 as follows:

An income tax, known as the Utility Receipts Tax, is imposed upon the receipt of:

- (1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; . . .

The Sub-Chapter S corporation was liable for payment of the Utility Receipts Tax for the tax year 2003. IC § 6-2.3-2-4.

The issue to be determined is whether or not the Indiana Utility Receipts Tax is a tax measured by income and therefore required to be added back for Indiana adjusted gross income tax purposes.

The taxpayer argued that the department should not have added back the Utility Receipts Tax paid by the corporation because it is a consumption tax rather than a tax measured by income. The taxpayer based this argument on the findings of the Indiana Tax Court in First Chicago NBD v. Department of State Revenue, 708 N.E.2d 631 (Ind. Tax 1999). In that case NBD failed to add back its payments of the Michigan single business tax to its Indiana adjusted gross income. The department determined that NBD was required to add the payments back to its Indiana adjusted gross income because the Michigan single business tax was a tax measured by income. NBD argued that the Michigan single business tax was a value added tax and not a tax measured by income. In its discussion, the court defined an income tax as one "measured by the price received for the particular product." *Id.* p. 633. The court found that the Michigan single business tax was not an income tax. Rather, it was a value added tax that was computed by starting with a base tax and making modifications such as adding the costs of compensation and interest. The court held that since the Michigan single business tax was not a tax measured by income, NBD was not required to add its payments of the tax back to its Indiana adjusted gross income.

The imposition statute, IC § 6-3-2-1(a), clearly identifies the Indiana Utility Receipts Tax as an income tax. It is not, however, an income tax in name alone as the taxpayer argued. It is also an income tax in substance. The Indiana Utility Receipts Tax is imposed on the receipts a concern

receives for the sale of utilities. As required by the Indiana Tax Court's definition of an income tax, the Indiana Utility Receipts Tax is imposed on the total price received for the sale of the product. The Indiana Utility Receipts Tax is not a consumption tax as argued by the taxpayer. Rather, the Indiana Utility Receipts Tax qualifies as an income tax. Since it was measured by income, the Indiana Utility Receipts Tax payments should have been added back to the Sub-Chapter S corporation's adjusted gross income before the computation and distribution of the taxpayer's distributive share.

Finding

The taxpayer's protest is denied.

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